

APPEAL NO. 170960
FILED JUNE 2, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 27, 2017, with the record closing on March 16, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to right shoulder rotator cuff tear,¹ right shoulder old distal clavicle fracture non-union, and degenerative disc disease at C4-5, C5-6 and C6-7; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 9, 2015; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, requesting that the CCH be reconvened to permit her to present evidence concerning the disputed issues and contending that she had good cause for failing to attend the CCH on February 27, 2017, and arguing further that she advised her ombudsman prior to the time scheduled for the CCH that she was unable to attend the hearing and that, upon receiving the hearing officer's 10-day letter, she telephoned the Texas Department of Insurance, Division of Workers' Compensation (Division) as directed in the 10-day letter and requested resetting of the CCH.

The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The evidence reflects that the claimant, a performance artist, sustained an injury when she tripped and fell over a large dog. The carrier stipulated that the claimant sustained a compensable injury in the form of strains to the right wrist, right shoulder, neck, right hip and right leg on (date of injury). On February 27, 2017, a CCH was called to order to hear the disputed issues. The carrier was present; however, the claimant's ombudsman announced on the record that he had received word from the claimant just prior to the hearing that she had taken her child to school that morning and discovered that the school was experiencing an outbreak of head lice among the students, that the claimant's child also had head lice and that, for such reason, the claimant was unable to attend the CCH at the scheduled time on February 27, 2017.

¹ We note that the hearing officer, in the Statement of the Case, Discussion and Decision sections as well as the first paragraph of her Decision and Order and in Conclusion of Law No. 3 and Finding of Fact No. 6 mistakenly refers to this condition as "right should rotator cuff tear."

Due to the claimant's nonattendance at the CCH, the hearing officer caused a 10-day letter dated February 27, 2017, to be sent to the claimant. The hearing officer closed the record on March 16, 2017, and issued a decision on March 21, 2017, that was unfavorable to the claimant on all of the issues and indicated that the claimant had failed to respond to the 10-day letter.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and for such reason, remanded the case to the hearing officer to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In this case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on February 27, 2017. Furthermore, the claimant alleges in her appeal that she did respond to the 10-day letter by calling the Austin Field Office at the number listed in the 10-day letter and requesting resetting of the CCH. As in APD 020273, *supra*, the case is remanded to the hearing officer to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

We accordingly reverse the hearing officer's determinations that the compensable injury of (date of injury), does not extend to right shoulder rotator cuff tear, right shoulder old distal clavicle fracture non-union, and degenerative disc disease at C4-5, C5-6 and C6-7; that the claimant reached MMI on December 9, 2015; and that the claimant's IR is five percent and we remand this case to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if she wishes to do so on all of the issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge